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HOUSE BILL 964

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO LIENS; CHANGING PROVISIONS OF THE MECHANICS' AND MATERIALMEN'S LIEN LAWS TO CORRECT PROBLEMS AND CLARIFY THE LAW; REPEALING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 48-2-2.1 NMSA 1978 (being Laws 1990, Chapter 92, Section 2, as amended) is amended to read:

"48-2-2.1. PROCEDURE FOR PERFECTING CERTAIN MECHANICS' AND MATERIALMEN'S LIENS IN EXCESS OF TWO THOUSAND DOLLARS (\$2,000). --

A. The provisions of [~~Subsections B through D of~~] this section [~~do not~~] apply to claims of liens [~~made on residential property containing four or fewer dwelling units or to claims of liens~~] made by all persons except mechanics or materialmen who contract directly with the [~~original~~

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1 ~~contractor. For purposes of this section, "original~~
2 ~~contractor" means a contractor that contracts directly with~~
3 ~~the] owner.~~

4 B. No lien of a mechanic or a materialman claimed
5 in an amount of more than ~~[five thousand dollars (\$5,000)]~~ two
6 thousand dollars (\$2,000) may be enforced by action or
7 otherwise unless the lien claimant has given preliminary notice
8 in writing of his right to claim a lien in the event of
9 nonpayment ~~[and that]~~. The claimant shall give written notice
10 [was given not more than sixty days after initially furnishing
11 work or materials, or both] no later than the first day of the
12 second calendar month following the month in which all or part
13 of the claimant's labor was performed or materials delivered,
14 or both. The notice shall be given by either certified mail,
15 return receipt requested, ~~[Fax]~~ facsimile with acknowledgement
16 or personal delivery to:

17 (1) the owner or reputed owner of the property
18 upon which the improvements are being constructed; ~~[or]~~

19 (2) the original contractor, if any;

20 (3) a bonding company or corporate surety that
21 is providing either a payment bond or performance bond for the
22 project; and

23 (4) any subcontractor or any other party to
24 whom the claimant furnished labor or materials, or both, for
25 the project.

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1 C. If the owner or the original contractor claims
2 lack of notice as a defense to the enforcement of a lien
3 described in Subsection B of this section, he ~~must~~ shall show
4 that upon the request of the mechanic or materialman he
5 furnished to the lien claimant not more than five days after
6 such request was made:

7 (1) the original contractor's name, address
8 and license number, if there is an original contractor on the
9 project;

10 (2) the owner's name and address;

11 (3) a description of the property or a
12 description sufficiently specific for actual identification of
13 the property; and

14 (4) the name and address of any bonding
15 company or other surety that is providing either a payment or
16 performance bond for the project.

17 D. The notice required to be given by the claimant
18 ~~under~~ pursuant to provisions of Subsection B of this section
19 shall contain:

20 (1) a description of the property or a
21 description sufficiently specific for actual identification of
22 the property;

23 (2) the name, address and phone number, if
24 any, of the claimant; ~~and~~

25 (3) a brief description of the labor or

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1 materials, or both, furnished by the claimant; and

2 [~~(3)~~] (4) the name and address of the person
3 with whom the claimant contracted or to whom the claimant
4 furnished labor or materials, or both.

5 [~~E. A person required under Subsection B of this~~
6 ~~section to give notice to enforce his claim of lien may elect~~
7 ~~not to give the notice, but may give the required notice at a~~
8 ~~later time. If he elects to do so, the lien shall apply only~~
9 ~~to the work performed or materials furnished on or after the~~
10 ~~date thirty days prior to the date the notice was given. The~~
11 ~~provisions of Subsections C and D of this section apply to any~~
12 ~~notice given under this subsection.]~~

13 E. If the first day of the calendar month for which
14 a notice is to be given pursuant to Subsection B of this
15 section is a Saturday, Sunday or a legal holiday, the due date
16 for the notice to be mailed is the next business day thereafter
17 that has regular mail service and delivery.

18 F. As used in this section:

19 (1) "labor" means the performance of work or
20 the furnishing of skills or other services for the improvement,
21 survey or repair of real property;

22 (2) "materialman" means a person who furnishes
23 materials or supplies to an owner, an original contractor or
24 subcontractor that is incorporated, or to be incorporated, into
25 site improvements or repairs or survey of real property;

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1 (3) "original contractor" means a contractor
2 who has an expressed contractual relationship with the owner;
3 and

4 (4) "owner" means any person who owns or holds
5 legal or equitable interest in real property and who has the
6 legal capacity to contract for the construction of improvements
7 upon such property. "

8 Section 2. Section 48-2-6 NMSA 1978 (being Laws 1880,
9 Chapter 16, Section 6, as amended) is amended to read:

10 "48-2-6. TIME FOR FILING LIEN CLAIM - CONTENTS. --

11 A. Every original contractor, within one hundred
12 [~~and~~] twenty days after the completion of his contract, and
13 every person, except the original contractor, desiring to claim
14 a lien pursuant to Sections 48-2-1 through [~~48-2-19~~] 48-2-17
15 NMSA 1978, [~~must~~] shall, within ninety days after the
16 completion of any building, improvement or structure or after
17 the completion of the alteration or repair [~~thereof~~] of them or
18 the performance of any labor in a mining claim, file for record
19 with the county clerk of the county in which [~~such~~] the
20 property or some part [~~thereof~~] of it is situated, a claim
21 containing a statement of his demands, after deducting all just
22 credits and offsets. The claim shall state the name of the
23 owner or reputed owner, if known, and also the name of the
24 person by whom he was employed or to whom he furnished the
25 materials, and shall include a statement of the terms, time

1 given and the conditions of the contract, and also a
2 description of the property to be charged with the lien,
3 sufficient for identification. The claim [~~must~~] shall be
4 verified by the oath of himself or of some other person.

5 B. Except for an original contractor or person who
6 has contracted directly with the owner, the claim of lien of
7 any person filed pursuant to Chapter 48, Article 2 NMSA 1978
8 shall be limited in amount to no more than two thousand dollars
9 (\$2,000), unless the lien claimant gave preliminary written
10 notice pursuant to Section 48-2-2.1 NMSA 1978 of the right to
11 claim a lien for having provided materials, work or services
12 for the improvements to real property that could give rise to a
13 right to claim a lien under Section 48-2-2 NMSA 1978."

14 Section 3. REPEAL. -- Section 48-2A-12 NMSA 1978 (being
15 Laws 1989, Chapter 301, Section 12) is repealed.

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